Supreme Court, U.S.
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No. 99-438

IN THE

Supreme Court of the United States

ELMER and NANCY TRIVETTE, as Co-Administrators of the Estate of the late Randy James Trivette, and Nancy Trivette, Individually,

Petitioners,

v.

NORTH CAROLINA BAPTIST HOSPITALS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Supreme Court of North Carolina correctly affirmed the trial court's grant of summary judgment in favor of Respondent.

STATEMENT PURSUANT TO RULE 29.6

The North Carolina Baptist Hospitals, Inc. is a not-for-profit teaching hospital. There is no parent or publicly-held company that owns 10% or more of the corporation's stock.

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v.

NORTH CAROLINA BAPTIST HOSPITALS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

The Respondent North Carolina Baptist Hospital, Inc. respectfully requests that this Court deny the petition for writ of certiorari to review the judgment of the Supreme Court of North Carolina.

STATEMENT OF JURISDICTION

Jurisdiction over this Petition is not proper pursuant to 28 U.S.C. § 1254 as alleged by Petitioners. Jurisdiction is proper pursuant to 28 U.S.C. § 1257. Petitioners fail to proffer a sufficient basis for this Court to review the matter, however.

STATEMENT OF THE CASE

A. Randy Trivette Was Given An Adequate Medical Screening Examination And Was Stabilized Prior To His Release From The North Carolina Baptist Hospital.

Petitioners, a husband and wife, were the parents of Randy Trivette, a severely-disabled adult living under Petitioner's care. Petitioners allege that Mr. Trivette was not given an "adequate screening examination" and was not stabilized prior to his discharge from Respondent hospital, the North Carolina Baptist Hospitals, Inc. (hereinafter, "Respondent" or "NCBH") in violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395, *et seq.* (1986) (hereinafter, "EMTALA").

On May 2, 1996, Mr. Trivette was taken by ambulance to NCBH, presenting to the emergency department with signs and symptoms consistent with having suffered a seizure. On arrival, Mr. Trivette was given an initial medical screening examination, including a battery of blood and urine tests and a chest x-ray. Following his initial medical screening examination, Mr. Trivette was diagnosed with having suffered a suspected seizure. Based on this diagnosis, the emergency department administered intravenous fluids, oxygen, and Tylenol. Following consultation with the on-call physician for Mr. Trivette's personal, primary-care group, Mr. Trivette was admitted to NCBH overnight for continued monitoring and review. While admitted to NCBH, he regained consciousness and his condition stabilized.

The following morning, Mr. Trivette was examined by his personal primary-care physician, a non-North Carolina

Baptist Hospital physician. Mr. Trivette's personal physician concluded he was stable and no longer suffering from seizures and ordered him discharged with a prescription and instructions to call for an appointment if his condition worsened.

Twelve hours following discharge from NCBH, Mr. Trivette was taken by ambulance to Forsyth Memorial Hospital and was diagnosed with gastrointestinal bleeding and a cerebral hemorrhage. He was discharged from Forsyth Memorial Hospital on June 5, 1996. On October 9, 1996, four months after his discharge from Forsyth Memorial Hospital, Mr. Trivette died.

B. Proceedings Below.

The matter before this Court is the second of two suits filed by Petitioners claiming EMTALA violations. The first suit was dismissed without prejudice pursuant to 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim. The second suit, the one now before this Court, was filed on July 6, 1997. As with the prior suit, Respondent pled as an affirmative defense Petitioners' failure to state a claim and moved that the case be dismissed pursuant to Rule 12(b)(6).

At the hearing on Respondent's motion to dismiss, Petitioners submitted an affidavit of one of the Petitioners, Elmer Trivette. In rebuttal, Respondent submitted two affidavits of medical personal who treated Mr. Trivette. Following a review of the evidence presented at the hearing, the trial court entered summary judgment in favor of Respondent, applying EMTALA as summarized and interpreted by the Fourth Circuit Court of Appeals in *Vickers*

v. Nash Gen. Hosp., 78 F.3d 139 (4th Cir. 1996); (Pet. App. 34-35). Plaintiffs appealed to the North Carolina Court of Appeals, which affirmed the holding of the trial court. Plaintiff's served Notice of Appeal (dissent) and Petition for Discretionary Review to the Supreme Court of North Carolina.[1] Petitioners' Petition for Discretionary Review was allowed by the Supreme Court of North Carolina. Following oral arguments, the Supreme Court of North Carolina affirmed the entry of summary judgment in favor of Respondent.

REASONS FOR DENYING THE WRIT

This matter does not present an important issue for this Court's review. The decision of the trial court and the North Carolina appellate courts were based on well-settled, uniform federal case-law. There is neither a conflict among the Circuits as to the controlling law, nor did the Supreme Court of North Carolina reach a decision inconsistent with the uniform federal case-law.

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1. One Judge of the North Carolina Court of Appeals dissented from that part of the Court's opinion dealing with Petitioner's claim that Mr. Trivette was not given an appropriate medical screening under EMTALA. As a result, Petitioners were afforded an automatic right to review by the Supreme Court of North Carolina as to that issue. N.C. Gen. Stat. 7A-30. Petitioners sought, and were granted, discretionary review by the Supreme Court of North Carolina of Petitioner's second EMTALA claim that Mr. Trivette was not given stabilizing treatment. 349 N.C. 379, __ S.E.2d __ (1998).

I.

THE SUPREME COURT OF NORTH CAROLINA RELIED ON UNIFORM AND WELL-SETTLED, FEDERAL CASE-LAW WHEN REVIEWING PETITIONER'S CLAIM UNDER EMTALA'S MEDICAL SCREENING REQUIREMENT.

North Carolina's appellate courts reviewing this matter relied on the disparate treatment inquiry uniformly articulated by all federal Courts of Appeals having considered EMTALA's screening requirement. The first of two duties placed on hospitals by EMTALA is a screening provision requiring hospitals to "provide for an appropriate medical screening examination" to individuals coming to a hospital's emergency department for treatment. 42 U.S.C. § 1395dd(a). All federal courts interpreting EMTALA's screening provision have read the statute as requiring hospitals to develop an initial medical screening examination designed to identify emergency medical-conditions, and to apply that screening examination uniformly to all patients with similar complaint. *See, e.g., Vickers v. Nash General Hosp. Inc.*, 78 F.3d 139, 142 (4th Cir. 1996). Thus, the critical element of a claim under EMTALA's screening requirement is not the adequacy of the screening examination, as suggested by Petitioners, but whether the screening examination that was performed deviated from the hospital's evaluation process that would have been performed on other patients presenting to that hospital in similar conditions. *Id.* at 144; *see Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266, 272 (6th Cir. 1990) ("[A]n 'appropriate' screening is properly determined not by reference to particular outcomes, but instead by reference to a hospital's standard screening procedure."); *see also Marshall on behalf of Marshall v. East*

Carroll Parish Hosp. Service Dist., 134 F.3d 319 (5th Cir. 1998); *Repp v. Anadarko Mun. Hosp.*, 43 F.3d 519 (10th Cir. 1994); *Williams v. Birkeness*, 34 F.3d 695 (8th Cir. 1994); *Holcomb v. Monahan*, 30 F.3d 116 (11th Cir. 1994); *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037 (D.C. Cir. 1991). Consistent with this well-settled, federal case-law, the North Carolina Court of Appeals (and the decision of the North Carolina Supreme Court) stated that "a hospital satisfies EMTALA's screening requirement if it uniformly applies a standard medical screening examination," and concluded that Petitioners failed to present any evidence of disparate treatment and that the trial court properly granted summary judgment in favor of Respondent. *Trivette v. North Carolina Baptist Hosp., Inc.*, 131 N.C. App. 73, 76, 507 S.E.2d 48, 51 (1998); (Pet. App. 28). This opinion was in accord with well-settled, federal case-law.

Petitioners ignore that "appropriate," as used in the EMTALA statute, has consistently been defined by the courts as uniformity of application of the initial screening examination, and not the factbound medical-malpractice-inquiry Petitioners ask this Court apply. In an attempt to convince this Court that Mr. Trivette was not given an "appropriate medical screening" as required by EMTALA, Petitioners mischaracterize the medical evaluation and review given to Mr. Trivette by asserting that an EEG recommended by "Hospital personnel" was not given. (Pet. 11). In fact, the hospital personnel to which respondents refer was a third-year medical student. In his note the medical student listed an EEG as a possible "consideration." An EEG was contraindicated given Mr. Trivette's symptoms and likely would not have revealed his undiscovered medical condition. Thus, an EEG was not "recommended" by competent medical personnel as claimed by Petitioners, and

was not given because it was not indicated. Applying the definition of "appropriate" as developed by the federal courts, the courts below found that Petitioners did not present evidence to support their EMTALA claim and that Respondent was properly granted summary judgment.

II.

PETITIONERS ASK THIS COURT TO IGNORE CLEAR LANGUAGE OF EMTALA'S STABILIZATION REQUIREMENT.

Petitioners attempt to hold hospital emergency departments responsible for constructive knowledge of emergency medical-conditions is not supported by the language of EMTALA or the courts considering the stabilization requirement imposed by EMTALA. The second duty placed on hospitals by EMTALA requires a hospital to administer stabilizing treatment to a patient if the medical screening examination determines that the patient is suffering from an emergency medical condition. 42 U.S.C. § 1395dd(b)(1); (Pet. App. 37). The statute rejects Petitioner's proposed constructive knowledge standard. Section 1395dd(b)(1) states the stabilization requirement exists only "if any individual . . . comes to a hospital *and the hospital determines that* [*an*] *individual has an emergency condition* . . ." 42 U.S.C. § 1395dd(b)(1) (emphasis added); (Pet. App. 37). Thus, the plain language of the statute dictates a standard requiring actual knowledge of the emergency medical condition by hospital staff. *Baber v. Hospital Corp. of America*, 977 F.2d 872, 883 (4th Cir. 1992); *see also Gatewood*, 933 F.2d at 1041; *Cleland*, 917 F.2d at 271 ("[i]f the emergency nature of the condition is not detected, the hospital cannot be charged with failure to

stabilize a known emergency condition."); *Thorton v. Southwest Detroit Hosp.*, 895 F.2d 1131, 1134 (6th Cir. 1990) (requiring knowledge of condition before duty to give stabilizing treatment). The requirement that the emergency condition must be perceived before liability can attach under EMTALA comes from the consistent view of the courts that EMTALA "was not intended to guaranty proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence." *Powers v. Arlington Hosp. Ass'n*, 42 F.3d 851, 856 (4th Cir. 1994); *see also Summers v. Baptist Medical Ctr. Arkedlphia*, 69 F.3d 902, 904 (8th Cir. 1995) ("EMTALA is not a federal malpractice statute and it does not set a national emergency standard; claims of misdiagnosis or inadequate treatment are left to the state malpractice law."). Otherwise, EMTALA would become coextensive with malpractice claims for negligent treatment. *Vickers*, 78 F.3d at 145. Petitioner's claim that Respondent should be held responsible for constructive knowledge of decedent's condition is not supported by the clear language of the statute and should not be the basis for review by this Court.

Hospitals may not avoid liability under EMTALA, as Petitioners urge, by intentionally developing screening procedures so inadequate that they will fail to diagnose a patient's emergency medical condition. Whether an emergency department may have incorrectly diagnosed and treated a patient's condition has long been subject to scrutiny under state medical malpractice laws. *See, e.g.*, 61 Am. Jur. 2d, *Physicians, Surgeons and Other Healers*, § 234 ("[T]he relationship of the physician and patient, once initiated, continues until it is ended by the consent of the parties . . . or until service is no longer needed, and until then the physician is under a duty to continue to provide necessary medical care to the patient."). In this case, Petitioner's real

concern is not that Mr. Trivette was denied treatment required by EMTALA, but rather that his medical condition was allegedly misdiagnosed. Such an issue falls under North Carolina medical-malpractice-law, not EMTALA.

III.

THIS MATTER DOES NOT PRESENT THE COURT WITH IMPORTANT ISSUES.

The factbound contentions raised by Petitioners do not present this Court with the same or similar issues raised in *Roberts v. Galen of Virginia*, 111 F.3d 405 (6th Cir. 1998), *rev'd in part*, 525 U.S. 249, 119 S. Ct. 685, 142 L. Ed. 2d 648 (1999). *Roberts* resolved the then-existing conflict among the Circuit Courts of Appeals of whether proof of improper motive was required to support an EMTALA claim. In *Roberts*, this Court held that proof of improper motive is not an element of a claim under EMTALA's stabilizing treatment requirement. *Id.* (Petitioners suggest in their petition that this Court had not yet decided *Roberts*). Moreover, *Roberts* is inapplicable to this matter. As reflected in their petition, improper motive is not raised by Petitioners as an issue in this matter (Pet. 17), and was not considered by the courts below. Instead, the issues raised by Petitioners relate to specific questions of fact, not issues of law.

IV.

BY PRESENTING EVIDENCE FOR CONSIDERATION BY THE TRIAL COURT, PETITIONERS CONVERTED THE HEARING ON RESPONDENT'S MOTION TO DISMISS TO A HEARING FOR SUMMARY JUDGMENT.

As noted above, this matter was brought on for hearing of Respondent's motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. At the hearing Petitioners submitted evidence in opposition to Respondent's motion to dismiss in the form of the affidavit of Elmer Trivette. (Pet. App. 62-63). The trial court then accepted two affidavits from Respondent. (Pet. App. 59-60). By submitting evidence, the parties consented to converting the hearing to one for summary judgment, pursuant to Rule 12(b) of the North Carolina Rules of Civil Procedure. (Pet. App. 34-35). Based on the evidence presented, the trial court determined that Petitioners failed to forecast evidence in support of the claims and entered summary judgment in favor of Respondent. (Pet. App. 62-63). Because Petitioners consented to convert the hearing to one for summary judgment, Petitioners cannot now claim that they were denied the opportunity to pursue discovery. These procedural issues do not raise important issues sufficient to merit review by this Court.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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